IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 119

WILLIAM J. MURRAY, III, INFANT, BY MADALYN E. MURRAY, HIS MOTHER AND NEXT FRIEND, AND MADALYN E. MURRAY, INDIVIDUALLY,

Petitioners,

v.

JOHN N. CURLETT, PRESIDENT, SAMUEL EPSTEIN, MRS. M. RICHMOND FARRING, ELI FRANK, JR., DR. ROGER HOWELL, HENRY P. IRR, DR. WILLIAM D. McELROY, MRS. ELIZABETH MURPHY PHILLIPS, JOHN R. SHERWOOD, INDIVIDUALLY, AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY,

Respondents.

BRIEF AND APPENDIX OF ATTORNEY GENERAL OF MARYLAND, AMICUS CURIAE

In which the several States shown on the Appendix have joined through their Attorneys General (Names of other Attorneys General see reverse side of cover).

THOMAS B. FINAN,
Attorney General,
JAMES P. GARLAND,
Assistant Attorney General,
ROBERT F. SWEENEY,
Assistant Attorney General,
1201 Maryland National
Bank Bldg.,
Baltimore 2, Md.

The Daily Record Co., Baltimore 3, Md.

JOINING IN THE BRIEF

Hon. Richmond M. Flowers
Attorney General
State of Alabama

Hon. Robert Pickrell
Attorney General
State of Arizona

Hon. Bruce Bennett
Attorney General
State of Arkansas

Hon. Richard W. Ervin
Attorney General
State of Florida

Hon. Eugene Cook
Attorney General
State of Georgia

Hon. Allan G. Shepard
Attorney General
State of Idaho

Hon. William M. Ferguson
Attorney General
State of Kansas

Hon. Jack P. F. Gremillion
Attorney General
State of Louisiana

Hon. Frank E. Hancock
Attorney General
State of Maine

Hon. Joe T. Patterson
Attorney General
State of Mississippi

Hon. William Maynard
Attorney General
State of New Hampshire

Hon. Arthur J. Sills
Attorney General
State of New Jersey

Hon. Earl E. Hartley
Attorney General
State of New Mexico

Hon. Thomas Wade Burton
Attorney General
State of North Carolina

Hon. J. Joseph Nugent
Attorney General
State of Rhode Island

Hon. Daniel R. McLeod
Attorney General
State of South Carolina

Hon. Frank R. Farrar
Attorney General
State of South Dakota

Hon. George F. McCanless
Attorney General
State of Tennessee

INDEX

Table of Contents

Table of Citations

Cases

Statutes

Miscellaneous

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 119

WILLIAM J. MURRAY, III, INFANT, ETC., ET AL.,
Petitioners,

v.

JOHN N. CURLETT, ET AL.,
Respondents.

BRIEF OF ATTORNEY GENERAL OF MARYLAND, AMICUS CURIAE

In which the several States shown on the Appendix have joined through their Attorneys General.

THE INTEREST OF THE STATE OF MARYLAND

This brief is submitted by the Attorney General of Maryland, on behalf of the State of Maryland, to ask this Honorable Court to sustain the decision of the Court of Appeals of Maryland in the case of *Murray, et al. v. Curlett, et al.*, 228 Md. 239, 179 A. 2d 698.

The practice concerning which the Petitioners herein complain, that of the use of prayer or Bible readings as devotional exercises in the public schools of Baltimore, is in use not only within the geographic limits of that city, but also in each of the twenty-three counties of this State. An examination of local law in each of those counties re-

veals that this practice is not in use because of any ordinance, statute or school board regulation in those counties, but is a traditional one, and a practice which has existed for generations. Without exception, in each of Maryland's counties, as well as in Baltimore City, religious opening exercises are conducted on a voluntary basis, and those children who do not desire to participate are excused from so doing. Although in some few instances pupils have requested to be excused from these services, there have been no instances of objections being made to the practice itself, other than that involved herein.

It is, therefore, because of the statewide implication of the questions presented in this case that this brief is presented on behalf of the State of Maryland. It is because of the nationwide implication of this question that the Attorneys General of eighteen States have joined with us, as amicus curiae, to ask that this Court not hold religious opening exercises in the public schools to be in violation of the Constitution of the United States. The names of the Attorneys General who join with us, and the states which they serve, are set out at the conclusion of this brief.

JURISDICTION

The Petitioners herein invoked the jurisdiction of the Court under Title 28 U.S.C., Section 1257(3).

This brief of the State of Maryland as amicus curiae is filed under authority of Supreme Court Rules, Title 28 U.S.C. Rule 27, 1, (d).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves (1) the First Amendment to the Constitution of the United States, (2) Section 1 of the Fourteenth Amendment of the Constitution of the United States,

(3) Article 77, Sections 202, 203, and 231 of the Annotated Code of Maryland (1957 Edition), (4) Section 91 of the Charter and Public Local Laws of Baltimore City, (Flack, 1949), (5) Article 6, Section 6 of Rules of Board of School Commissioners of Baltimore City, (Amendment to Rule adopted November 17, 1960.)

The pertinent portions of the constitutional and statutory provisions involved are set forth verbatim on Page 4 of Petitioners brief.

QUESTION PRESENTED

Whether the use of the Lord's prayer and verses from the bible recited without comment as daily opening exercises in the public schools of Baltimore City, pursuant to a rule of the Board of School Commissioners of Baltimore City, violates the First Amendment of the Constitution of the United States where attendance during such recitation is not compulsory.

STATEMENT OF THE CASE

The Attorney General of Maryland adopts as the Statement of the Case herein, the Statement of the Case as presented on Page 3 of the brief of the Respondents, John N. Curlett, et al.

SUMMARY OF ARGUMENT

Reversal of the decision of the Court of Appeals of Maryland in this case will require by necessary implication the prohibition of all official public acknowledgments of the Divinity and the theistic concept of our origin and end.

Reversal of the decision of the Court of Appeals of Maryland will by necessary implication impose upon the

populace an atheistic or at least agnostic concept of our origin and end and will itself constitute the establishment of a religion.

ARGUMENT

I.

Reversal of the Decision of the Court of Appeals of Maryland In This Case Will Require by Necessary Implication the Prohibition of All Official Public Acknowledgments of the Divinity and the Theistic Concept of Our Origin and End.

The practice of reciting the Lord's Prayer, or reading selected verses from Scriptures as opening exercises in the public schools of Baltimore is not in violation of the First Amendment to the Constitution of the United States.

The objections to the use of prayer, or readings from Scriptures, or any devotional exercises in the public schools of Baltimore are based upon the initial prohibition of the First Amendment to the Constitution of the United States, as made applicable to the states through the Fourteenth Amendment.

In considering this question, the Court of Appeals of Maryland in *Murray, et al. v. Curlett, et al., supra*, held that the practice was not a violation of the "establishment of religion" clause and "free exercise" clause of the First Amendment, nor of the "equal protection" clause of the Fourteenth Amendment. In its decision, dated April 6, 1962, the Maryland Court reviewed the decisions of this Honorable Court to that date, and found that this Court had not then passed on the constitutional questions involved in the appeal then before it. Judge Horney, speaking for the majority of a divided court, found that the decisions of this court clearly indicated that the public school exercise complained of did not violate any pro-

vision of the Constitution of the United States. The Court of Appeals noted that it found this exercise to be in the same category as the opening prayer ceremonies in the Legislature of the State of Maryland, and in the Congress of the United States. For those reasons and particularly because the infant Petitioner was not compelled to participate in or to attend the program he claimed was offensive to him, the Court upheld the action of the *nisi prius* judge in dismissing the petition.

Shortly after the decision of the Court of Appeals of Maryland, this Honorable Court, on June 25, 1962, rendered its decision in the case of *Engel v. Vitale*, 8 L. Ed. 601, which decision held a non-denominational prayer composed by the Board of Regents of the State of New York for use in the public schools of that State, to be in violation of the First Amendment. The Attorney General of Maryland had joined on the brief of the Attorney General of Nevada as amicus curiae in the *Engel* case, as it was our view that the New York prayer was not in violation of the First Amendment. We accept, however, as we must, the decision of this Court in that case.

We do not believe that the *Engel* decision controls the question now before this Honorable Court. We submit that that decision should be limited to apply only to (1) the prayer then in question, which had been composed by officials of the State of New York, and (2) any prayer composed by State or other governmental officials. We do not believe that *Engel* prohibits the various states from permitting, in their public school systems, opening devotional exercises which have not been composed by any governmental agency.

We believe that this distinction is valid, and we respectfully urge it upon the Court as a basis for finding

constitutionally unassailable the practice involved herein. The arguments in favor of that basis of distinction are clearly set forth in the brief of Respondent Board of Education of Baltimore City, and are adopted by us.

However, we wish to point out that if that distinction is abolished in the present case and if the practices involved herein are held to violate the First Amendment, the results proposed in the concurring opinion in *Engel v. Vitale*, 8 L. Ed. 601, are logically unassailable and are inevitable. If the recognition of the existence of and our reliance upon a Divine Providence cannot constitutionally be allowed in our public schools because it constitutes indirect coercive pressure upon religious minorities, certainly no less pressure is exerted by the reading of our basic and organic documents and the singing of the officially espoused anthems, which establish such recognition as the fundament of our national heritage.[1]

If such expressions as "with a firm reliance upon the protection of Divine Providence";[2] "that the Supreme Lawgiver of the Universe by illuminating those to whom it is addressed, may on the one hand turn their councils from every act which would affront his Holy prerogative";[3] "That Almighty God both created the mind free, and manifested his Supreme Will that free it shall remain by making it altogether insusceptible of restraint";[4] and "the term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character and of

[1] "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313.

[2] These words are found in the closing sentence of the Declaration of Independence.

[3] MADISON, *Memorial and Remonstrances Against Religious Assessments*, Article 15.

[4] JEFFERSON, Bill for Establishing Religious Freedom.

obedience to his will".[7] do not constitute implied, if not express, recognition of the existence of a Divinity supported not only by the power and prestige but also by the fundamental philosophy of our government, then they must be cast aside as meaningless cant. If the invocation of God and the supplication of his aid in our governmental assemblies are not a recognition of theism financed by the State, then such invocations must be treated as falsehoods uttered to delude a theistic populance. Unless the expressions of our basic documents are treated as cant and the invocations of our highest assemblies are treated as falsehoods, they must be considered to stand in the same relation to the Constitution as the simple invocation and supplication contained in the Lord's Prayer, and a recitation of a few verses from the Bible.

It is the grave fear of the State of Maryland that the striking down of the practices of the public schools of Baltimore, and inferentially of the whole State, in regard to such recitation, must by inexorable logic strike down all official utterances or practices acknowledging, or even referring to, a Divine Power as author and governor of our affairs. The complaint in this matter is made by an atheist on the basis that his faith in non-God is offended in a constitutional sense, by the practices in question.[8] No references to a Creator, a God, a Divinity or Divine Providence, however non-sectarian, however otherwise innocuous, could be conceived of which would not in the same sense be offensive to him and his co-religionists. If that practice is held unconstitutional, the heritage upon

[7] *Paris v. Beason*, 133 U.S. 333, 342

[8] A concise statement of Petitioner's creed as an atheist is set forth in paragraph 7 of the Petition for Writ of Mandamus filed by him in the Superior Court of Baltimore City and which is reproduced at Pages 4 and 5 of the Transcript of Record herein.

which our Nation was founded, and upon which it now rests, will have been stricken down.

We do not believe that the founders of this Nation and framers of the Constitution ever intended that document to be interpreted in such a manner that acknowledgment of the existence of God would be forbidden by its terms.[7] It is our belief that the founders of this Nation, themselves religious men, and including among their number many who had known religious oppression, intended only to prevent the establishment of an official form of belief or non-belief, and intended to provide that every man should be free to worship or not worship in the manner and to the extent he chose. Whatever the actual intention of the authors of the Constitution and the First Amendment, however, it is clear that the overwhelming majority of the citizens of this nation today do not believe that opening devotional exercises in the public schools are offensive.

In our Appendix hereto we attempt to summarize the practice in each of the states in this Nation concerning devotional exercises in the public schools. We have compiled this table with the assistance of the Attorneys General of each of the several states, and believe it to be an accurate summary. An examination of that survey discloses that of the forty-eight states surveyed (Maryland and Pennsylvania excepted), in no fewer than thirty-seven states opening devotional exercises are permitted and held, to some extent. As the Appendix reveals, certain states require such an exercise by Constitution or statute, while

[7] The "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson, a portion of whose original draft thereof has been quoted above, has been recognized by the Court as having had the same objective and as having intended to provide the same protection against governmental intrusion on religious liberty as the First Amendment. *Everson v. Board of Education*, 330 U.S. 1, 13 and cases therein cited.

in others the law is silent, and the practice traditional. In only seven states is the practice clearly forbidden by statute, judicial decision, or by Opinion of the Attorney General. In two states, the law is silent, but the practice does not exist, and we are not advised as to the curre practice or law in this regard in the states of New York and Nevada.

The direct results of a holding by this Court that devotional exercises in the public schools of this County are in violation of the Constitution are apparent; the indirect results will be disruptive of our highest traditions.

II.

Reversal of the Decision of the Court of Appeals of Maryland Will By Necessary Implication Impose Upon the Populace an Atheistic Or At Least Agnostic Concept of Our Origin and End and Will Itself Constitute the Establishment of a Religion.

We are not unmindful of the cautionary maxim that the narrow issues before the Court should not be exceeded. Nevertheless, we submit that the issues here presented require a deeper and yet more direct thrust. Religion as placed before the Court in this case is religion laid bare past its bones to its very essence.

The issue is not one of divergence among various sects or persuasions as to the manner in which a Divine Power is to be acknowledged and invoked, but rather, it is whether our origins, aspirations and ends must be officially presented with reference to a Divine Author or to a non-Divine Author. If, as we have indicated above, reversal of the Court of Appeals of Maryland in this case requires eradication from public activities of any acknowledgment of the Divinity, it will likewise cause the substitution therefor of some non-Divine Entity. Official neutrality in regard

to religion so presented is a rational impossibility, for such neutrality itself imposes upon the public the establishment of a religion in the very sense in which that concept has been presented to the Court in this case.[8]

Petitioner has claimed the protection of the free exercise clause for his practice of atheism, which he terms a faith and which he equates with "religion" as used in the First Amendment. In so describing his atheism he is doubtless correct, in the constitutional sense. No single definition of religion as therein used has yet been satisfactorily agreed upon. The Court in *Davis v. Beason*, 133 U.S. 333 defines religion as follows:

> "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."

This definition, if literally read, would exclude the atheist and his faith, since it presupposes the existence of that which the atheist's faith requires him to deny. It is clear, however, that "religion" as used in both the free exercise clause and the establishment clause is broad enough to encompass atheism,[9] and within the circumstances of this case the controversy is between that broad area of religion which acknowledges a Divinity, and that much narrower area which denies a Divinity or substitutes a material or secular entity for the Divine. These concepts are so basically opposed as to be mutually exclusive.

If it is a prohibition of the free exercise of the religion of atheism for a State or the Federal Government officially

---

[8] "When the power, prestige, and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Engel v. Vitale*, 8 L. Ed. 601, 608.

[9] Cf. *Torcaso v. Watkins*, 367 U.S. 488, 495, n. 11.

to recognize the Divinity or the Divine origin of the forces which ultimately control man, it is no less a prohibition of the free exercise of theistic religion officially to prohibit such official recognition. Even the most primitive and most brutish minds perceive and recognize the existence and operation of forces uncontrolled by man. A State which officially prohibits the identification of such forces with Divinity in the educational medium which, with certain safeguards, it compels its youth to attend and its populace to support, substitutes within that medium an identification of those forces with a non-Divinity.

Since men and nations rely by nature upon some intangible force as the source and director of their destinies, an official eradication of "One Nation Under God" leaves us necessarily with One Nation under something other than God; an official ban against our officially having "reliance on Divine Providence" of necessity leaves us relying officially on non-Divine Providence. Whether that non-Divinity be chance or nature, whether it be the State itself or abstract ethical principles, some non-Divine identification of the source of our moral precepts, our beginnings and our end will have been imposed willingly or unwillingly upon the citizens of Maryland and upon the Nation.[10]

Similarly, if it constitutes the establishment of a theistic religion to recite in public schools, under the circumstances of the present controversy, an ancient and revered acknowledgment of Divinity, it must equally constitute the establishment of an atheistic, or at least agnostic, religion to ban by official pronouncement such recitation. Religion in its broadest aspect, touching as it does every aspect of

[10] We commend to the Court's attention in this regard the quotations set forth at Footnote 9 on Page 30 of Appellant's brief in the companion case, *School District etc. v. Schempp et al.*, October Term, 1962, No. 142.

human endeavor and human existence, does not admit of neutrality, since that neutrality itself is a religion[11] which if officially espoused, is officially established.

Such establishment would effectively accomplish the shackling of men's tongues to make them speak only the religious thoughts that government wanted them to speak, which was the very evil, as this Court stated in *Engel*,[12] the First Amendment sought to avoid.

We submit that, since neutrality in the true sense is impossible; since any decision must, in the context of the *Engel* decision, establish either an acknowledgment of God or His official rejection, the Court's decision should support the heritage revered by the majority, rather than the comparative novelty preached by the minority. We submit that since no present evil or deprivation is shown to be involved in the practices of the Respondent,[13] the Court's decision should support that which is imbedded in the very grain of our civilization.

[11] We submit that the definition of "agnostic" contained in *Webster's New International Dictionary, Second Edition* (unabridged) at Page 50 is compatible with nothing other than neutrality.

[12] 8 L. Ed. 601, 610.

[13] No expenditure of public money or direct coercion of the Petitioner was alleged in his Petition for Writ of Mandamus.

CONCLUSION

For the reasons stated herein and for the reasons set forth in the Respondents' brief, the Attorney General, on behalf of the State of Maryland, respectfully submits that the decision of the Court of Appeals of Maryland should be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,

JAMES P. GARLAND,
Assistant Attorney General,

ROBERT F. SWEENEY,
Assisant Attorneys General,
1201 Maryland National
Bank Bldg.,
Baltimore 2, Md.

APPENDIX

ALABAMA

Section 542, Title 52, Code of Alabama 1940, requires the Holy Bible to be read once every day in schools supported in whole or in part by public funds.

ALASKA

Regulations of the State Board of Education do not permit the use of opening religious exercises.

ARIZONA

Article XI, Section 7 of the Arizona Constitution prohibits sectarian *instructions* in public schools. By statute, ARS Section 15-203, the certificate of any teacher who uses sectarian books or teaches a religious doctrine shall be revoked. Religious opening exercises are rarely held in Arizona public schools.

ARKANSAS

Arkansas Statutes Annotated Section 80-1606 provides that every teacher shall provide for the reverent daily reading of a portion of the English Bible without comment in every public tax supported school, and that prayer may be offered or the Lord's Prayer recited. The statute also provides that no pupil shall be required to take part and that any pupil shall be excused from the room on written request from a parent or guardian.

CALIFORNIA

Opinion No. 53-266 of the Attorney General of California interprets the law in that state as prohibiting the reading of the Bible for religious purposes or uttering religious prayers in the public schools.

COLORADO

The practice of Lord's Prayer and Bible reading is permitted in Colorado under *People ex rel Vollmer v. Stanley*, 81 Colo. 276, 255 P. 610. The practice is rarely exercised.

CONNECTICUT

The State law is silent on the question of religious exercises in public schools. In some of such schools, however, the Lord's Prayer is recited at the beginning of the day and in others a non-sectarian form of Grace is said before meals, on a voluntary basis.

DELAWARE

Article 14, Delaware Code Annotated, Sections 4102 and 4103 provides for daily Bible reading in all of the public schools.

FLORIDA

Bible reading "without sectarian comment" has been upheld, on a voluntary basis, in *Chamberlin v. Dade County*, Circuit Court for Dade County, Case No. 59-C-4928 and No. 59-C-8873. 1 Florida Statutes, Section 231.09 (2) permits this practice.

GEORGIA

Georgia Code Annotated, Section 32-705 provides that the Bible, including the Old and New Testament shall be read in all of the schools receiving State funds, on a voluntary basis.

HAWAII

Rule No. 6122.81 of the Board of Education of Hawaii forbids religious instruction in the public schools but permits the practice of opening school with devotional exercises on a voluntary basis.

IDAHO

Article IX, Section 6 of the Constitution of the State of Idaho provides that no teacher or student of any public school shall ever be required to attend or participate in any religious service. Idaho Code, Section 33-2704 provides that selections from the Standard American Bible shall be read in all public schools. The practice required by the Code is universally carried out.

Illinois

People v. Board of Education, 245 Ill. 334, 92 N.E. 251 interprets the Constitution of Illinois as forbidding the recital of prayers or the reading of Scriptures in public schools.

Indiana

Indiana Statutes Annotated, Section 28-5105 permits daily Bible reading in the public schools.

Iowa

Section 280.9, 1962 Code of Iowa, provides that the Bible shall not be excluded from any public school or institution in the State, and that no child shall be required to read it contrary to the wishes of his parents or guardian. The constitutionality of this statute was upheld in *Moore v. Monroe*, 64 Iowa 367, 20 N.W. 475 (1884). The Principal of each school in Iowa determines whether the Lord's Prayer is to be recited in that school.

Kansas

G.S. Kan. 1949, 72-1722 and 72-1819 prohibit the teaching of sectarian doctrines in the public schools and provide that the Holy Scriptures without note or comment may be used therein. *Billard v. Board of Education*, 69 Kan. 53, 76 Pac. 422 (1904) held that the repeating of the Lord's Prayer and the Twenty-third Psalm as a morning exercise were not prohibited by Kansas law.

Kentucky

In *Hackett v. Brooksville*, 87 S.W. 792 (1905) the Court of Appeals of Kentucky upheld the use of prayer in the public schools. Opinions of the Attorney General 62-779 interpret present Kentucky law as permitting the use of the Lord's Prayer or selections from the Bible as opening religious exercises.

LOUISIANA

Opening religious exercises are permitted, by tradition, in this State. Such a practice has been held by the Attorney General of Louisiana to be not in conflict with the State law. Senate Concurrent Resolution No. 57 (1962) of the Senate of Louisiana expresses the wish of that body that such a practice be continued.

MAINE

Revised Statutes of Maine, 1954, Chapter 41, Section 145 provides: "* * * there shall be, in all the public schools of the state, * * * readings from the scriptures with special emphasis upon the Ten Commandments, the Psalms of David, the Proverbs of Solomon, the Sermon on the Mount and the Lord's Prayer."

MASSACHUSETTS

General Laws, Chapter 71, Section 31, provides "that a portion of the Bible shall be read daily in the public schools, without * * * comment," on a voluntary basis.

MICHIGAN

Phieffer v. Board of Education, 118 Mich. 560, 77 N.W. 250, upheld the practice of Bible reading in the public schools. There is no statute permitting or forbidding this practice.

MINNESOTA

Kaplan v. Independent School District, 171 Minn. 142, 214 N.W. 18, upheld the practice of Bible reading in the public schools on a voluntary basis.

MISSISSIPPI

Section 18 of the Mississippi Constitution of 1890 provides: "No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect or mode of worship; * * * The rights

hereby secured shall not be construed to * * * exclude the Holy Bible from use in any public school of this State."

Missouri

Bible reading or the recitation of prayers are neither required nor forbidden by Missouri law. It does not appear that the practice is in use in any public schools in Missouri.

Montana

The use of opening religious exercises is within the discretion of the local school boards in Montana. Records of the Department of Public Instruction indicate that less than two per cent of Montana's public schools have such exercises, and those are usually confined to a minute of silent prayer.

Nebraska

State v. Scheve, 65 Neb. 853, 91 N.W. 846, interprets the provision of the Nebraska Constitution as forbidding religious exercises in the public schools of Nebraska.

Nevada

Information is not available on the present prayer practice in the State of Nevada.

New Hampshire

Pursuant to the provisions of New Hampshire Revised Statutes Annotated, Chapter 189, Section 15, local school boards in New Hampshire may permit opening religious exercises. The schools in that State are generally opened with a recitation of the Lord's Prayer and in some instances by a reading of a portion of the Scriptures.

New Jersey

N.J.S.A. 18:14-77 provides that at least five verses taken from the Old Testament shall be read without comment in each public school classroom. Upheld in *Doremus v. Board of Education*, 5 N.J. 435, 75 A.2d 880 (1950). [The United

States Supreme Court dismissed the appeal in that case on jurisdictional grounds. 342 U.S. 429, 72 S. Ct. 394, 96 L. Ed. 475.]

NEW MEXICO

By tradition, public schools of New Mexico read Bible verses and have public prayer according to the wishes of the local administration. There is no statewide law governing this practice.

NEW YORK

Information is not available on the practice existing in the State of New York following the decision of the Supreme Court in *Engel v. Vitale, supra.*

NORTH CAROLINA

By tradition most public schools in the State of North Carolina have a daily reading of verses from the Bible and say a prayer before the school day starts, on a voluntary basis. This practice is not regulated by statute or court decision.

NORTH DAKOTA

Section 15-38-12 of the North Dakota Century Code provides: "The Bible shall not be deemed a sectarian book. At the option of the teacher, it may be read in school for not to exceed ten minutes daily, but no sectarian comment shall be made thereon. No pupil shall be required to read it or to be present in the schoolroom during the reading thereof contrary to the wishes of his parents or guardians or other person having him in charge."

Section 15-47-10 of the North Dakota Century Code provides that the Ten Commandments shall be displayed in every public school classroom. The records of the Superintendent of Public Instruction of North Dakota indicate that few of the State's public schools currently follow the practice of reading the Bible.

Ohio

Nessle v. Humi, 2 O.D. 1 Ohio N.P. 140 upheld Bible reading in the public schools of Ohio.

Oklahoma

Title 70, Article 2, Section 1 of the School Code of Oklahoma provides: "No sectarian or religious doctrine shall be taught or inculcated in any of the public schools of this State, but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures." The office of the State Superintendent of Education advises that it is the practice in most schools of the State to have prayer and reading of the Holy Scriptures as opening exercises in the classrooms.

Oregon

Oregon has no general statute either permitting or prohibiting the use of opening religious exercises in public schools. Local school districts determine whether or not opening school exercises are to be utilized by their teachers. The practice is followed in some such districts and does not exist in others.

Rhode Island

By tradition the question of prayer in public schools has been left to the discretion of individual teachers. Where such a practice exists, it is carried out on a voluntary basis without any compulsion on the part of the students.

South Carolina

Religious exercises, such as silent prayer, reading of Scriptures, or reciting of the Lord's Prayer, are commonly followed as part of the day's activities in the public schools. There is no statutory enactment relating to religious exercises, nor any statewide administrative directive upon this subject.

South Dakota

Prayers are said by tradition. Opening religious exercises are held in most of the schools of the State. No statute requires or forbids this practice.

Tennessee

Section 49-1307 of the Tennessee Code provides: "It shall be the duty of the teacher * * * to read or cause to be read at the opening of school every day, a selection from the Bible * * *" *Phillip M. Carden v. Bland, et al.*, 199 Tenn. 365, 288 S.W.2d 718, upheld the statute as not being violative of either the State or Federal Constitution.

Texas

Church v. Bullock, 104 Tex. 1, 109 S.W. 115, upheld the practice of Bible reading on a voluntary basis in the public schools. In Opinions of the Attorney General of Texas, WW-1445 (1962) that official advised the Texas Education Agency that the recent *Engel* decision did not prohibit the public schools of the State of Texas from allowing prayers or reading passages from the Bible, as long as such prayers were not composed, prescribed, or supported by the State or any political subdivision.

Utah

Opening religious exercises are limited to an invocation and the State has no established policy. The question of whether or not any exercise shall be held is left to the discretion of the individual Principal.

Vermont

Prayers in the schools of Vermont are neither permitted nor forbidden by State law. The practice exists to some extent and is conducted on a voluntary basis.

VIRGINIA

Virginia has no statutes relative to religious exercises in the public schools and no regulation or directive of the State Board of Education concerning this practice. Prayers are said in Virginia schools within the discretion of local school authorities. The nature of these exercises varies from school to school.

WASHINGTON

Because of *State ex rel Dearle v. Fraizer*, 102 Wash., 369, 173 P. 35 (1918) and *State ex rel Clithero v. Showalter*, 159 Wash., 519, 293 P. 1000 (1930) there is no existing practice in the State of Washington of beginning the school day with either the Lord's Prayer or reading of the Bible.

WEST VIRGINIA

The statutes of West Virginia are silent with reference to opening religious exercises and there is no regulation of the State Board of Education concerning the same. In the majority of the State's public schools some devotional service is conducted each morning on a voluntary basis.

WISCONSIN

State ex rel Weiss v. District Board of Education, 76 Wis. 177, 44 N.W. 767 (1890) interprets the Wisconsin Constitution as forbidding the reading of the Bible in the public schools.

WYOMING

Article VII, Section 12 of the Wyoming Constitution has been interpreted by the Attorney General of that State as prohibiting religious exercises of any sort in the public schools.